

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM
Section 1, Chama Mainstream

**STATE OF NEW MEXICO'S RESPONSE
TO MOTION TO RECONSIDER AND REVIEW EVIDENCE
(DOC. 9949) BY DAVID ORTIZ**

The State of New Mexico, *ex rel.* State Engineer ("State") by and through its undersigned counsel files this Response to the *Motion to Reconsider and Review Evidence Submitted by Objectors of the Recommended 1600 Priority Date for the Acequia de Chamita and Assign the August 11, 1958 Establishment Date* by David Ortiz (September 2, 2010, Doc. 9949). The motion should be denied.

In its Memorandum Opinion and Order filed June 25, 2010 (Doc. 9910) ("Opinion"), the Court granted the State's motion to limit review of the Special Master's report filed December 16, 2009 (Doc. 9546) to evidence presented to the Special Master at the 1996 hearings on disputed priorities of three acequias. The Court indicated that the decision of whether to receive additional evidence after receiving a report from a Magistrate Judge or Special Master is committed to the sound discretion of the district court, and that it may deny a party's request to present additional evidence where the party made an insufficient showing that the additional material could not have been discovered, with due diligence, and presented to the Magistrate or Master. (Opinion at 2). The Court granted the State's

motion and noted that it is not in the interest of justice to allow a party to wait until a Report and Recommendation has been issued and then submit evidence that a party has in its possession but chose not to submit. (Id. at 3).

A motion to reconsider is appropriate when (1) the Court has made a manifest error of fact or law; (2) there is newly discovered evidence or (3) there has been a change in the law. *Williams v. Weber*, 905 F. Supp. 1502, 1514 (D. Kan. 1995); cf. *Phelps v. Hamilton*, 122 F.3d 1309, 1323 (10th Cir. 1997) (treating same as a motion to alter under Fed. R. Civ. P. 59(e)). Mr. Ortiz' motion fails to address these standards. The motion simply includes additional information and argument that purports to support his claims that the Acequia de Chamita was established on August 11, 1598. There is no showing that this information could not have been presented to the Special Master at the time of the 1996 hearings.

In addition, Mr. Ortiz did not file an objection to the Notice and Order to Show Cause in 1995 or 1996, nor has he made a showing that he is the successor-in-interest to the owner of a subfile who timely filed an objection to the Notice and Order to Show Cause. *See Order Limiting Consideration of Objections to Special Master's Report Filed December 16, 2009 to Parties Subject to the Pretrial Order on Mainstream Priorities Filed March 25, 1996*. The Court, therefore, is not considering his objections.

For these reasons, the State of New Mexico requests that the Court deny the motion to reconsider filed by Mr. Ortiz on September 2, 2010 (Doc. 9949).

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of September, 2010 I filed the foregoing electronically through the CM/ECF system which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail, and served the following non-CM/ECF Participants in the manner indicated:

via first class mail, postage prepaid addressed as follows:

David Ortiz
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